

**Introduced by Senator Berryhill**

February 17, 2011

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An act to amend Sections 128.7, 391, and 391.7 of the Code of Civil Procedure, relating to frivolous litigation.

LEGISLATIVE COUNSEL'S DIGEST

SB 603, as introduced, Berryhill. Frivolous litigation: sanctions.

Existing law requires every pleading, petition, written notice of motion, or other similar paper to be signed by the attorney of record, or if a party is unrepresented, by the party, thereby certifying to the best of the person's knowledge, information, and belief that it is not being presented primarily for an improper purpose, as specified, and that the claims, defenses, and legal and factual contentions are warranted, as specified. Existing law authorizes the court, upon its own motion, or the motion of a party, to impose sanctions on an attorney, law firm, or other party that violates these provisions in a complaint, petition, or other paper filed on or after January 1, 1995.

This bill would require the court to make its decision in writing regarding its own motion, or the motion of a party, and to specify the reasons for the decision in writing.

Existing law authorizes a court in any litigation, upon motion of the defendant, to require the plaintiff to furnish security, as specified, upon a showing that the plaintiff is a vexatious litigant and has no reasonable probability of prevailing. Existing law also authorizes the court, upon its own motion or that of a party, to enter a prefiling order that prohibits a vexatious litigant from filing any new litigation in the courts of this state in propria persona without obtaining leave of the presiding judge of the court where the litigation is proposed to be filed, as specified. Existing law defines "vexatious litigant" for these purposes in a manner

that limits application of these provisions to proceedings brought in propria persona, including a person who, in any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers.

This bill would delete certain references to “in propria persona” from these provisions and the definition for “vexatious litigant,” thereby expanding the proceedings to which these provisions apply, in specified instances, to include litigation that is not brought in propria persona.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 128.7 of the Code of Civil Procedure is  
2 amended to read:

3 128.7. (a) Every pleading, petition, written notice of motion,  
4 or other similar paper shall be signed by at least one attorney of  
5 record in the attorney’s individual name, or, if the party is not  
6 represented by an attorney, shall be signed by the party. Each paper  
7 shall state the signer’s address and telephone number, if any.  
8 Except ~~when~~ as otherwise provided by law, pleadings need not be  
9 verified or accompanied by *an* affidavit. An unsigned paper shall  
10 be stricken unless omission of the signature is corrected promptly  
11 after being called to the attention of the attorney or party.

12 (b) By presenting to the court, whether by signing, filing,  
13 submitting, or later advocating, a pleading, petition, written notice  
14 of motion, or other similar paper, an attorney or unrepresented  
15 party is certifying that to the best of the person’s knowledge,  
16 information, and belief, formed after an inquiry reasonable under  
17 the circumstances, all of the following conditions are met:

18 (1) It is not being presented primarily for an improper purpose,  
19 such as to harass or to cause unnecessary delay or needless increase  
20 in the cost of litigation.

21 (2) The claims, defenses, and other legal contentions therein  
22 are warranted by existing law or by a nonfrivolous argument for  
23 the extension, modification, or reversal of existing law or the  
24 establishment of new law.

25 (3) The allegations and other factual contentions have  
26 evidentiary support or, if specifically so identified, are likely to

1 have evidentiary support after a reasonable opportunity for further  
2 investigation or discovery.

3 (4) The denials of factual contentions are warranted on the  
4 evidence or, if specifically so identified, are reasonably based on  
5 a lack of information or belief.

6 (c) If, after notice and a reasonable opportunity to respond, the  
7 court determines that subdivision (b) has been violated, the court  
8 may, subject to the conditions stated below, impose an appropriate  
9 sanction upon the attorneys, law firms, or parties that have violated  
10 subdivision (b) or are responsible for the violation. In determining  
11 what sanctions, if any, should be ordered, the court shall consider  
12 whether a party seeking sanctions has exercised due diligence.

13 (1) A motion for sanctions under this section shall be made  
14 separately from other motions or requests and shall describe the  
15 specific conduct alleged to violate subdivision (b). Notice of motion  
16 shall be served as provided in Section 1010, but shall not be filed  
17 with or presented to the court unless, within 21 days after service  
18 of the motion, or any other period as the court may prescribe, the  
19 challenged paper, claim, defense, contention, allegation, or denial  
20 is not withdrawn or appropriately corrected. If warranted, the court  
21 may award to the party prevailing on the motion the reasonable  
22 expenses and attorney's fees incurred in presenting or opposing  
23 the motion. Absent exceptional circumstances, a law firm shall be  
24 held jointly responsible for violations committed by its partners,  
25 associates, and employees.

26 (2) On its own motion, the court may enter an order describing  
27 the specific conduct that appears to violate subdivision (b) and  
28 directing an attorney, law firm, or party to show cause why it has  
29 not violated subdivision (b), unless, within 21 days of service of  
30 the order to show cause, the challenged paper, claim, defense,  
31 contention, allegation, or denial is withdrawn or appropriately  
32 corrected.

33 (d) *The court shall make its decision in writing regarding a*  
34 *motion pursuant to paragraph (1) or (2) of subdivision (c), and*  
35 *shall specify the reasons for the decision in writing.*

36 ~~(e)~~

37 (e) A sanction imposed for violation of subdivision (b) shall be  
38 limited to what is sufficient to deter repetition of this conduct or  
39 comparable conduct by others similarly situated. Subject to the  
40 limitations in paragraphs (1) and (2), the sanction may consist of,

1 or include, directives of a nonmonetary nature, an order to pay a  
2 penalty into court, or, if imposed on motion and warranted for  
3 effective deterrence, an order directing payment to the movant of  
4 some or all of the reasonable attorney's fees and other expenses  
5 incurred as a direct result of the violation.

6 (1) Monetary sanctions may not be awarded against a  
7 represented party for a violation of paragraph (2) of subdivision  
8 (b).

9 (2) Monetary sanctions may not be awarded on the court's  
10 motion unless the court issues its order to show cause before a  
11 voluntary dismissal or settlement of the claims made by or against  
12 the party that is, or whose attorneys are, to be sanctioned.

13 ~~(e) When~~

14 (f) *If* imposing sanctions, the court shall describe the conduct  
15 determined to constitute a violation of this section and explain the  
16 basis for the sanction imposed.

17 ~~(f)~~

18 (g) In addition to any award pursuant to this section for conduct  
19 described in subdivision (b), the court may assess punitive damages  
20 against the plaintiff upon a determination by the court that the  
21 plaintiff's action was an action maintained by a person convicted  
22 of a felony against the person's victim, or the victim's heirs,  
23 relatives, estate, or personal representative, for injuries arising  
24 from the acts for which the person was convicted of a felony, and  
25 that the plaintiff is guilty of fraud, oppression, or malice in  
26 maintaining the action.

27 ~~(g)~~

28 (h) This section shall not apply to disclosures~~and~~, discovery  
29 requests, responses, objections,~~and~~ or motions.

30 ~~(h)~~

31 (i) A motion for sanctions brought by a party or a party's  
32 attorney primarily for an improper purpose, such as to harass or  
33 to cause unnecessary delay or needless increase in the cost of  
34 litigation, shall itself be subject to a motion for sanctions. It is the  
35 intent of the Legislature that courts shall vigorously use its  
36 sanctions authority to deter that improper conduct or comparable  
37 conduct by others similarly situated.

38 ~~(i)~~

1 (j) This section shall apply to a complaint or petition filed on  
2 or after January 1, 1995, and any other pleading, written notice of  
3 motion, or other similar paper filed in that matter.

4 SEC. 2. Section 391 of the Code of Civil Procedure is amended  
5 to read:

6 391. As used in this title, the following terms have the  
7 following meanings:

8 (a) “Litigation” means any civil action or proceeding,  
9 commenced, maintained or pending in any state or federal court.

10 (b) “Vexatious litigant” means a person who does any of the  
11 following:

12 (1) In the immediately preceding seven-year period has  
13 commenced, prosecuted, or maintained in propria persona at least  
14 five litigations other than in a small claims court that have been  
15 (i) finally determined adversely to the person or (ii) unjustifiably  
16 permitted to remain pending at least two years without having been  
17 brought to trial or hearing.

18 (2) After a litigation has been finally determined against the  
19 person, repeatedly relitigates or attempts to relitigate, ~~in propria~~  
20 ~~persona~~, either (i) the validity of the determination against the  
21 same defendant or defendants as to whom the litigation was finally  
22 determined or (ii) the cause of action, claim, controversy, or any  
23 of the issues of fact or law, determined or concluded by the final  
24 determination against the same defendant or defendants as to whom  
25 the litigation was finally determined.

26 (3) In any litigation ~~while acting in propria persona~~, repeatedly  
27 files unmeritorious motions, pleadings, or other papers, conducts  
28 unnecessary discovery, or engages in other tactics that are frivolous  
29 or solely intended to cause unnecessary delay *or harassment*.

30 (4) Has previously been declared to be a vexatious litigant by  
31 any state or federal court of record in any action or proceeding  
32 based upon the same or substantially similar facts, transaction, or  
33 occurrence.

34 (c) “Security” means an undertaking to assure payment, to the  
35 party for whose benefit the undertaking is required to be furnished,  
36 of the party’s reasonable expenses, including attorney’s fees and  
37 not limited to taxable costs, incurred in or in connection with a  
38 litigation instituted, caused to be instituted, or maintained or caused  
39 to be maintained by a vexatious litigant.

1 (d) “Plaintiff” means the person who commences, institutes or  
2 maintains a litigation or causes it to be commenced, instituted or  
3 maintained, including an attorney at law acting in propria persona.

4 (e) “Defendant” means a person—~~(including, including a~~  
5 corporation, association, partnership, and firm, or governmental  
6 ~~entity)~~ *entity*, against whom a litigation is brought or maintained  
7 or sought to be brought or maintained.

8 SEC. 3. Section 391.7 of the Code of Civil Procedure is  
9 amended to read:

10 391.7. (a) In addition to any other relief provided in this title,  
11 the court may, on its own motion or the motion of any party, enter  
12 a prefiling order—~~which~~ *that* prohibits a vexatious litigant from  
13 filing any new litigation in the courts of this state in ~~propria persona~~  
14 without first obtaining leave of the presiding judge of the court  
15 where the litigation is proposed to be filed. Disobedience of the  
16 order by a vexatious litigant may be punished as a contempt of  
17 court.

18 (b) The presiding judge shall permit the filing of that litigation  
19 only if it appears that the litigation has merit and has not been filed  
20 for the purposes of harassment or delay. The presiding judge may  
21 condition the filing of the litigation upon the furnishing of security  
22 for the benefit of the defendants as provided in Section 391.3.

23 (c) The clerk ~~may~~ *shall* not file any litigation presented by a  
24 vexatious litigant subject to a prefiling order unless the vexatious  
25 litigant first obtains an order from the presiding judge permitting  
26 the filing. If the clerk mistakenly files the litigation without the  
27 order, any party may file with the clerk and serve on the plaintiff  
28 and other parties a notice stating that the plaintiff is a vexatious  
29 litigant subject to a prefiling order as set forth in subdivision (a).  
30 The filing of the notice shall automatically stay the litigation. The  
31 litigation shall be automatically dismissed unless the plaintiff  
32 within 10 days of the filing of that notice obtains an order from  
33 the presiding judge permitting the filing of the litigation as set  
34 forth in subdivision (b). If the presiding judge issues an order  
35 permitting the filing, the stay of the litigation shall remain in effect,  
36 and the defendants need not plead, until 10 days after the  
37 defendants are served with a copy of the order.

38 (d) For purposes of this section, “litigation” includes any  
39 petition, application, or motion other than a discovery motion, in

1 a proceeding under the Family Code or Probate Code, for any  
2 order.  
3 (e) The clerk of the court shall provide the Judicial Council a  
4 copy of any prefiling orders issued pursuant to subdivision (a).  
5 The Judicial Council shall maintain a record of vexatious litigants  
6 subject to those prefiling orders and shall annually disseminate a  
7 list of those persons to the clerks of the courts of this state.

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